

Calendar No. 745

106TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 106-368

AUTHORIZING THE CONSTRUCTION OF A RECONCILIATION PLACE IN FORT PIERRE, SOUTH DAKOTA, AND FOR OTHER PURPOSES

AUGUST 25, 2000.—Ordered to be printed

Filed under authority of the order of the Senate of July 26, 2000

Mr. CAMPBELL, from the Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 1658]

The Committee on Indian Affairs, to which was referred the bill (S. 1658) to authorize the construction of the Reconciliation Place in Fort Pierre, South Dakota, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSES

The purpose of S. 1658, introduced by Senator Daschle on September 29, 1999, and cosponsored by Senator Johnson, are (1) to promote a better understanding of the history and culture of the Sioux people, and by doing so, achieve better relations between Indian and non-Indian peoples; (2) to promote economic development on the reservations; (3) to establish a Sioux Nation Supreme Court to help increase legal consistency among the reservations, and thus create a legal environment more conducive to business investment and to building respect for the law; (4) to establish a training center to train tribal personnel in conflict resolution and alternative dispute resolution; and, (4) to locate all of these entities at a single facility to minimize administrative and building costs. To achieve these purposes, S. 1658 would authorize funds for the construction of a multipurpose center to be known as “Reconciliation Place” in Pierre, South Dakota, at which would be located and operated a Sioux Nation Supreme Court, at which would be located and oper-

ated a Sioux Nation Supreme Court, a National Native American Mediation Training Center, a Native American Economic Development Council, and an Historical Archive and Display Center.

BACKGROUND AND NEED

In 1997, the chairmen of all nine South Dakota Sioux tribes joined in a letter to Senator Daschle seeking assistance for the Wakpa Sica Historical Society's efforts to develop plans for construction and development of a "Reconciliation Place" with attending programs in Fort Pierre, South Dakota, on the bank of the Missouri River where, in 1804, leaders of the Teton Sioux Tribes first met representatives of the United States of America—Meriwether Lewis and William Clark.

As envisioned by the Historical Society, a non-profit community of tribal and non-tribal leaders dedicated to forging understanding between tribal and non-tribal cultures, the focus of the Reconciliation Place would be fostering awareness, learning, understanding, and professional development in the promotion of reconciliation between non-tribal people—most of U.S. society—and tribal people or persons with Native American ancestry. It would do so by pursuing three initiatives. One initiative would be to create a center for tribal cultural history and a Sioux Nations Archives, to display and interpret tribal history, art, and culture for all visitors, to provide a repository for tribal history and tribal members' family histories, and to assist in the return of cultural and spiritual artifacts to tribes under Federal law. The second initiative would be to establish an interpretative center that would feature the Sioux Nation's first encounter with Americans—Lewis and Clark—and the economic history of the Missouri River Valley, with emphasis on contrasting the different economic systems indigenous to the tribes and to the incoming U.S. citizens, and on illuminating the natural misunderstanding and conflict that these differences prompted. The third initiative would be to provide a home for a Sioux Nation Tribal Supreme Court, which would provide additional professional guidance and support for existing tribal local and appellate courts in dealing with increasing caseloads associated with the growth of tribal commerce, finance, and economic development. This initiative reflects a consensus among Sioux tribal leaders that a supreme court is key not only to promoting tribal socio-economic well-being, but also effective tribal government.

The establishment of the Wakapa Sica Historical Society and a need for reconciliation between tribal and non-tribal peoples is part of the legacy of the contentious and bitter history of the United States' dealings with the Sioux Nation since the time of Lewis and Clark. That legacy embraces a broad array of economic, social, and governmental problems, including often tense and uneasy race relations between Indians and non-Indians in South Dakota, characterized by misunderstanding and mistrust, and poor economic conditions on the reservations, characterized by low per capital income rates and high unemployment rates. To appreciate the need for reconciliation in these circumstances, a brief summary of some of the more notable events in the United States' dealings with the Sioux Nation is necessary.

In 1803, President Jefferson commissioned the Lewis and Clark expedition to explore the lands acquired through the Louisiana

Purchase. On September 24, 1804, Lewis and Clark anchored their three riverboats where the Wakpa Sica, or Bad River, flows into the Missouri River. The next day, half of the party of 44 men landed on the west bank of the Missouri and formally paraded on the river plain under the flag of the United States. They then joined Chief Black Buffalo and braves of the Teton Sioux for council in the chief's buffalo skin lodge. This was one of the first meetings between representatives of the Sioux tribes and representatives of the United States.

In 1815, the United States entered into treaties with the Dakota and Lakota tribes of the Sioux Nation, in which the United States pledged to protect the tribes.¹ In 1825, the United States entered into treaties of peace, friendship and commerce with the tribes of the Sioux Nation to promote the fur trade and the safe passage of American citizens through Sioux Nation territory.² In 1851, to facilitate trade and reduce intertribal conflict that sometimes threatened safe passage, the United States entered into a treaty with the Sioux and neighboring Indian tribes, which described their respective aboriginal areas.³

After the Civil War, the United States' westward expansion led to conflict with the Sioux Nation, who saw their buffalo herds, and consequently their economic livelihoods, begin to decline with the passage of settlers along the Oregon Trail. In 1866, the United States sought to build a road through Sioux Nation hunting grounds in the Powder River valley, despite the objections of the Sioux tribes. Over the next two years, the tribes fought the Powder River or Red Cloud's War to protect their hunting grounds. The war ended with the signing of the Treaty with the Sioux, 1868, in which the United States set aside lands in South Dakota west of the Missouri River as the Great Sioux Reservation as a "permanent home" for the Sioux Nation and delineated tribal hunting grounds in the Powder River valley.⁴

In 1874, gold was discovered in the Black Hills of South Dakota, and a gold rush began. After unsuccessfully attempting to maintain the reservation boundaries that had been established only six years before, President Grant's Administration made repeated offers to purchase the Black Hills, but the Sioux, to whom the Black Hills were (and still are) sacred, refused to sell. Late in 1875, the United States ordered the Sioux to report to Indian agencies along the Missouri River and in Nebraska, away from the Black Hills. Though few Sioux actually received notice of the order, the United States Army was sent to enforce it in the spring of 1876. This led to the Battles of the Rosebud and the Little Big Horn. After Custer's defeat at the Little Big Horn, the United States sent more troops to force the Sioux to report to the Indian agencies. Many other battles ensued and many Sioux were killed.⁵ In 1877, Congress enacted legislation taking more than 7.2 million acres of land, including the Black Hills, from the Sioux Nation.⁶

In the 1880's, the United States sought more land from the Sioux. In an 1889 Agreement, the United States divided the Great

¹ Treaty with the Teton (Lakota), 1815; 7 Stat. 125.

² See e.g., Treaty with the Hunkpapa Band of the Sioux Tribe, 1825; 7 Stat. 257.

³ Treaty with the Sioux, 1851; 11 Stat. 749.

⁴ Treaty with the Sioux, 1868; 15 Stat. 635.

⁵ *United States v. Sioux Nation*, 448 U.S. 371, 379–80 (1980).

⁶ Act of Feb. 28, 1877; 19 Stat. 254.

Sioux Reservation into the Cheyenne River, Crow Creek, Lower Brule, Pine Ridge, Rosebud, and Standing Rock Sioux Reservations. Under the General Allotment Act of 1887, the United States opened up these reservations to non-Indian homesteaders, and set in motion a process through which Indian ownership of land throughout the United States was reduced by approximately 100 million acres before the allotment policy was abandoned in 1934. Through this process non-Indians settled within the boundaries of Sioux reservations, resulting in checkerboarded land ownership and further reductions in the tribes' land base.

Also in the late 1880's, what became known as the Ghost Dance religion, which was believed to render its practitioners impervious to bullets, became popular among Indians on several reservations. In response to non-Indian alarm over the practice of the Ghost Dance in large Indian encampments, the U.S. Army was summoned, and in December, 1890, more than 300 Sioux Indians, mostly unarmed elderly, women and children, were massacred at Wounded Knee.⁷ From the Indian perspective, the United States added insult to injury when the Army subsequently awarded the Medal of Honor to 17 soldiers for their actions during the massacre.

With enactment of the Flood Control Act of 1944 (58 Stat. 827), Congress authorized the construction of five massive earthen dams on the Missouri River as part of the Pick-Sloan plan for water development in the Missouri River Basin. The lands affected by construction of these dams and reservoirs were, by and large, Indian lands. Six Sioux reservations in North and South Dakota and Nebraska lost a combined total of more than 375,000 acres, much of it prime bottomland of huge economic and cultural significance to the tribes, to these projects. Entire tribal communities were relocated and their economies crippled or destroyed. Much of the land taken by the United States for these projects was by condemnation proceedings later found by the courts to have been unauthorized by law. Despite the enormous tangible and intangible adverse impacts suffered by these tribes, compensation for their losses from the United States was for the most part belated and incommensurate with the value of the losses.

The accrued physical and psychological impacts resulting from the abrogation of solemn treaties, war, the taking of the Black Hills, the breakup, fractionation and reduction of tribal lands via allotments, the disruption of communities and economies by the construction of Federal dams and reservoirs, among other events, continue to contribute to feelings of bitterness and loss among the people of the Sioux Nation. In turn, these feelings and the attitudes associated with them tend to aggravate and complicate the tribes' relationships with the United States and local and state governments as well as relations between individual Indians and non-Indians. This is true despite efforts by the Congress and others to address some of these past wrongs, such as formally apologizing for the Wounded Knee Massacre and by enacting legislation to provide additional compensation for the losses suffered from the Pick-Sloan dam projects. In 1981, after thirty years of arduous litigation in the Indian Claims Commission, the U.S. Claims Court and the U.S.

⁷ *Sioux Tribe of Indians v. United States*, 7 Cl. Ct. 468, 476 (1985).

Supreme Court, the Sioux Nation obtained an \$81 million judgment, including interest, for the loss of the Black Hills. With interest since 1981, that judgment is now worth approximately \$500 million; however, the money remains in the U.S. Treasury because the tribes of the Sioux Nation continue to seek the return of the Black Hills. About the manner by which the United States obtained the Black Hills, the United States Claims Court observed that “A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history”.⁸

From the perspective of the tribes of the Sioux Nation, evidence of the many adverse consequences of major events in their history, and the effects of these events on their people’s present-day relations with non-tribal people and entities, are far more pervasive around their reservations than perhaps anywhere else. Awareness of this history and perspective were key factors leading to the establishment of the Wakpa Sica Historical Society and to the Society’s efforts to help foster a healing spirit of reconciliation among the Sioux Nation and other citizens of South Dakota, and to promote a better understanding of Native American history and culture throughout the United States.

With great assistance from the Office of Tribal Justice of the U.S. Department of Justice, the Wakpa Sica Historical Society has developed detailed plans for a Reconciliation Place, which would be located on 80 acres of land acquired from private individuals and public entities. In the course of developing these plans, the project was expanded to include a Native American Economic Development Council to provide a continuing source of funds and focus on the overwhelming need to promote economic development on the reservations. On September 29, 1999, Senator Daschle introduced S. 1658, a bill to authorize the construction of a Reconciliation Place in Fort Pierre, South Dakota, and for other purposes.

S. 1658: SUMMARY OF PROVISIONS

Reconciliation Place—As amended and reported by the Committee on Indian Affairs, S. 1658 would authorize the Secretary of the Department of Housing and Urban Development, in cooperation with the Secretary of the Interior, to provide a grant of up to \$18,258,441 to the Wakpa Sica Historical Society to construct a facility, known as the Reconciliation Place, to house an Historical Archive and Display Center, the Sioux Nation American Mediation Training Center, and a Sioux Nation Economic Development Council.

Historical Archive and Display Center—The majority of documents and artifacts pertaining to the history of the Sioux Nation are kept in government facilities that are scattered across the United States and are not easily accessible to the public. The Historical Archive and Display Center at Reconciliation Place would provide a central repository for such documents and artifacts. By providing easier access to these materials and by displaying and interpreting the history, art, and culture of the Lakota, Nakota, and Dakota tribes of the Upper Midwest, the Center could enhance the knowledge and understanding of the history of the Sioux, and promote reconciliation among Indians and non-Indians.

⁸*United States v. Sioux Nation*, 20 Ct. Cl. at 241 (1975).

Sioux Nation Supreme Court—The bill directs the Attorney General to use available funds to provide technical and financial assistance to the Sioux Nation to develop and operate a Sioux Nation Tribal Supreme Court.

National Native American Mediation Training Center—In response to a suggestion made in testimony by the Administration's witness before the Committee's hearing on S. 1658, the bill was amended to include a direction to the Attorney General to use available funds to provide technical and financial assistance to the National Native American Mediation Training Center. This center would address the need for Native American mediators trained in conflict resolution techniques to address conflicts that arise between Indian tribes and neighboring communities and within tribal communities themselves throughout Indian country.

Native American Economic Development Council—S. 1658 would establish a Native American Economic Development Council, which would be a charitable nonprofit corporation not considered to be an agency of the United States. The Council would be comprised of eleven members; one from each South Dakota Sioux Tribe, one nominated by the Government of South Dakota, and one nominated by the senior member of the South Dakota congressional delegation. Each member would serve a two-year term.

The council would be authorized to accept private gifts of property and to raise funds from private entities for use as matching funds for Federal assistance, to provide expertise and technical support to help Indians establish successful businesses and in obtaining Federal assistance for economic development activities, and to provide scholarships to Indian students pursuing a business education.

The Council would be subject to annual auditing and reporting requirements, and the United States would not be liable for any debts, defaults, acts or omissions of the Council. Finally, S. 1658 authorizes \$10 million for five fiscal years, beginning with FY 2000, for the Secretary of the Interior to make grants to the Council to fulfill its purposes.

LEGISLATIVE HISTORY

On September 29, 1999, Senator Daschle introduced S. 1658 and the bill was referred to the Committee on Indian Affairs. On May 17, 2000, the Committee on Indian Affairs held a hearing on S. 1658. Senator Johnson, on behalf of the South Congressional delegation, and witnesses from the Administration, the United Sioux Tribes of South Dakota Development Corporation, and the Chairman of the Lower Brule Sioux Tribe testified in strong support of the bill. The witness from the Wakpa Sica Historical Society submitted letters of support from the current Governor and a former Governor of South Dakota, the State Bar Association, the State Chamber of Commerce, the State Retailers Association, the Mayors of the cities of Ft. Pierre and Pierre, and the County Commissioners of the relevant local counties. On June 21, 2000, the Committee on Indian Affairs adopted an amendment-in-the-nature-of-a-substitute to S. 1658 that includes new provisions providing for the establishment of the Native American Mediation Training Center at the Reconciliation Place.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on June 21, 2000, adopted an amendment-in-the-nature-of-a-substitute to S. 1658 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1. Findings

Section 1 sets forth seven Congressional findings.

The first and second findings are that there is a continuing need for reconciliation between Indians and non-Indians that may be met partially through the promotion of the understanding of the history and culture of Sioux Indian tribes.

The third finding is that the establishment of a Sioux Nation Tribal Supreme Court will promote economic development on reservations of the Sioux Nation and provide investors that contribute to that development a greater degree of certainty and confidence by reconciling conflicting tribal laws and strengthening tribal court systems.

The fourth finding is that the reservations of the Sioux Nation contain the poorest counties in the United States and lack adequate tools to promote economic development and the creation of jobs.

The fifth finding is that the establishment of a Native American Economic Development Council will assist in promoting economic growth and reducing poverty on reservations of the Sioux Nation by coordinating economic development efforts, centralizing expertise concerning Federal assistance, and facilitating the raising of funds from private sources to meet matching requirements under certain Federal assistance programs.

The sixth finding is that there is a need to enhance and strengthen the capacity of Indian tribal governments and tribal justice systems to address conflicts which impair relationships within Indian communities and between Indian and non-Indian communities and individuals.

The seventh finding is that the establishment of the National Native American Mediation Training Center, with the technical assistance of tribal and Federal agencies, including the Community Relations Service of the Department of Justice, would enhance and strengthen the mediation skills that are useful in reducing tensions and resolving conflicts in Indian communities and between Indian and non-Indian communities and individuals.

Section 2. Definitions

Section 2 sets forth definitions of the terms “Indian Tribe”, “Secretary”, and “Sioux Nation”.

Title I—Reconciliation Center

Section 101. Reconciliation Center

Subsection (a) requires the Secretary of Housing and Urban Development (HUD), in cooperation with the Secretary of the Interior, to establish a reconciliation center, to be known as “Reconciliation Place”.

Subsection (b) requires the Secretary of the Interior to take into trust for the benefit of the Sioux Nation the parcel of land in Stanley County, South Dakota, described as “The Reconciliation Place Addition”, that is owned by the Wakpa Sica Historical Society, Inc., for the purpose of establishing and operating The Reconciliation Place.

Subsection (c) states the purposes of Reconciliation Place to be (1) to enhance the knowledge and understanding of the history of Native Americans by displaying and interpreting the history, art, and culture of Indian tribes for Indians and non-Indians; providing an accessible repository for the history of Indian tribes and the family history of members of Indian tribes; (2) to provide for the interpretation of the encounters between Lewis and Clark and the Sioux Nation; (3) to house the Sioux Nation Supreme Court; (4) to house the Native American Economic Development Council; and, (5) to house the National Native American Mediation Training Center to train tribal personnel in conflict resolution and alternative dispute resolution.

Subsection (d) requires the Secretary of HUD, after consultation with the Secretary of the Interior, to offer to award a grant to the Wakpa Sica Historical Society for the construction of Reconciliation Place. As a condition to receiving the grant, the Society shall enter into an agreement with the Secretary of HUD which shall specify the duties of the Society under this section and arrangements for the maintenance of Reconciliation Place. This subsection also authorizes to be appropriated to the Department of HUD \$18,358,441 to be used for the grant under this section.

Section 102. Sioux Nation Supreme Court and National Native American Mediation Training Center

Subsection (a) provides that to ensure the development and operation of the Sioux National Tribal Supreme Court and the National Native American mediation Training Center, the Attorney General of the United States shall use available funds to provide technical and financial assistance to the Sioux Nation.

Subsection (b) authorizes to be appropriated such sums as are necessary to carry out this section.

Title II—Native American Economic Development Council

Section 201. Establishment of Native American Economic Development Council

Subsection (a) provides authority for the establishment of the Native American Economic Development Council (hereafter “Council”) as a charitable, nonprofit corporation that shall not be considered to be an agency or establishment of the United States.

Subsection (b) states the purposes of the council to be (1) to encourage, accept, and administer private gifts of property; (2) to use those gifts as a source of matching funds needed to receive Federal Assistance; (3) to provide tribal members with the skills and resources necessary for establishing successful businesses; (4) to provide grants and loans to tribal members who are students pursuing an education in business or a business-related subject; and, (6) to provide technical assistance to Indian tribes and tribal members in obtaining federal assistance.

Section 202. Board of Directors of the Council

Subsection (a) provides that the Council shall have a governing Board of Directors (hereinafter "Board") consisting of 11 directors who shall be citizens of the United States appointed by the Secretary of the Interior. Each of the nine directors shall represent one of the nine reservations of South Dakota and shall be selected from among nominations submitted by the appropriate Indian tribes. One director shall be selected from nominations submitted by the Governor of South Dakota and one director shall be selected from nominations submitted by the most senior member of the South Dakota Congressional delegation.

Subsection (b) requires the Secretary to appoint the directors of the Board no later than December 30, 2000, to 2-year terms. A vacancy on the Board shall be filled no later than 60 days after a vacancy occurs, in the same manner as the original appointment, and no individual may serve more than 3 consecutive terms as a director.

Subsection (c) provides that the Chairman of the Board shall be elected from its members for a term of 2 years.

Subsection (d) provides that a majority of the members of the Board shall constitute a quorum for the transaction of business.

Subsection (e) provides that the board shall meet at the call of the Chairman at least once a year. If a director misses 3 consecutive regularly scheduled meetings, he may be removed by the Secretary and the vacancy filled in accordance with subsection (b).

Subsection (f) provides that members of the board shall serve without pay, but may be reimbursed for actual and necessary travel and subsistence expenses incurred in the performance of Council duties.

Subsection (g) grants the Board powers to appoint officers, to adopt a constitution and bylaws consistent with the purposes of the Council under this Act, and to carry out such other actions as necessary to carry out the Council's purposes under this Act. Appointment to the Board shall not constitute employment by or holding of an office of the United States for the purposes of any Federal law. Officers and employees of the Council may not be appointed until the Council has sufficient funds to pay them for their service; shall be appointed without regard to the provisions of title 5, United States code, governing appointments in the competitive service; and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. The first officer or employee appointed by the Board shall be the Secretary of the Board, who shall serve, at the direction of the Board, as its chief operating officer and be knowledgeable and experienced in matters relating to economic development and Indian affairs.

Section 203. Powers and Obligations of the Council

Subsection (a) provides that the Council shall have, in addition to the powers otherwise given it under this Act to carry out this purposes, the usual powers of a corporation acting as a trustee in South Dakota, including the power (1) to accept any gift devise or bequest, absolutely or in trust, of real or personal property of any income therefrom or other interest therein; (2) to acquire by purchase or exchange any real or personal property or interest therein;

(3) to sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom unless otherwise required by the instrument of transfer; (4) to borrow money and issue bonds, debentures, or other debt instruments; (5) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the directors shall not be personally liable, except for gross negligence; (6) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and, (7) to carry out any action that is necessary and proper to carry out the purposes of the Council.

Subsection (b) provides that the Council shall (A) have perpetual succession; (B) may conduct business throughout the several States, territories, and possessions of the United States and abroad; (C) shall have its principal offices in South Dakota; and (D) shall at all times maintain a designated agent authorized to accept service of process for the Council, service to whom shall be deemed as service on or notice to the Council.

Subsection (c) provides that the Council shall have an official seal selected by the Board, which shall be judicially noticed.

Subsection (d) provides that the Council may accept a current or future interest in a gift, even if that gift is encumbered, restricted, or subject to beneficial interests of 1 or more private persons.

Section 204. Administrative Services and Support

Subsection (a) provides that the Secretary may provide personnel, facilities, and other administrative services to the Council, including reimbursement of expenses under section 202, not to exceed then current Federal government per diem rates, for a period ending not later than 5 years after the date of enactment of this Act.

Subsection (b) permits the Council to reimburse the Secretary for any administrative service provided under subsection (a), and the Secretary shall deposit any such reimbursement into the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such service. The Secretary is authorized to continue to provide facilities and necessary support services for such facilities to the Council after the date specified in subsection (a) on a space available, reimbursable cost basis.

Section 205. Volunteer Status

Subsection (a) provides that, notwithstanding any other provision of law, the Secretary may accept, without regard to the civil service classification laws, rules, or regulations, the services of the Council, the Board, and the officers and employees of the Board, without compensation from the Secretary, as volunteers in the performance of the functions authorized under this Act.

Subsection (b) authorizes the Secretary to provide for incidental expenses, including transportation, lodging, and subsistence to the officers and employees serving as volunteers under subsection (a).

Section 206. Audits, Report Requirements, and Petition of Attorney General for Equitable Relief.

Subsection (a) provides that the Council shall be subject to auditing and reporting requirements under section 10101 of title 36,

United States Code, in the same manner as is a corporation under part B of that title.

Subsection (b) requires the Council, as soon as practicable after the end of each fiscal year, to transmit to Congress a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments.

Subsection (c) provides that if the Council engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with the purposes of the Council under section 201(b), or refuses, fails, or neglects to discharge its obligations under this Act or threatens to do so, then the Attorney General of the United States may petition the U.S. District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

Section 207. United States Release From Liability

This section declares that the United States shall not be liable for any debts, defaults, acts, or omissions of the Council, and that the full faith and credit of the United States shall not extend to any obligation of the Council.

Section 208. Grants to Council; Technical Assistance

Subsection (a) provides that, not less than annually, the Secretary shall award a grant to the Council, to be used to carry out the purposes specified in section 201(b) in accordance with this section. As a condition of receiving a grant, the secretary of the Board, with its approval, shall enter into an agreement with the Secretary that specifies the duties of the Council in carrying out the grant and the information that is required to be included in the agreement under this section. Each such agreement shall specify that the Federal share of a grant under this section shall be 80 percent of the cost of the activities funded under the grant. No such grant may be made to the council unless the Council has raised an amount from private persons and State and local government agencies equivalent to the non-Federal share of the grant. Each agreement shall also specify that a reasonable amount of the Federal funds made available to the Council under such agreement, but not more than 15 percent of such funds, may be used by the Council for administrative expenses, including salaries, travel and transportation expenses, and other overhead expenses.

Subsection (b) provides that the Secretary of HUD, the Secretary of the Interior, the Commissioner of Indian Affairs, the Assistant Secretary for Economic Development of the Department of Commerce, the Administrator of the Small Business Administration, and the Administrator of the Rural Development Administration shall provide to the Council such technical assistance as may be necessary for the Council to carry out the purposes specified in section 201(b).

Section 209. Authorization of Appropriations

Subsection (a) authorizes to be appropriated to the Department of the Interior \$10,000,000 for each of fiscal years 2002, 2003, 2004, 2005, and 2006 to be used in accordance with section 208.

Subsection (b) provides that the amounts authorized to be appropriated under this section are in addition to any amounts provided to the Council under any other provision of Federal law.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1658, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 26, 2000.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1658, a bill to authorize the construction of a reconciliation place in Fort Pierre, South Dakota, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact for this estimate is Lanette J. Keith.

Sincerely,

STEVEN M. LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

S. 1658—A bill to authorize the construction of a reconciliation place in Fort Pierre, South Dakota, and for other purposes

Summary: S. 1658 would authorize the construction of a building—to be known as Reconciliation Place—in Fort Pierre, South Dakota. It would house displays on the history of the Sioux Nation, and the offices of the Sioux Nation Tribal Supreme Court and National Native American Mediation Training Center, the Native American Economic Development Council, and the Lewis and Clark Interpretive Center.

Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 1658 would cost \$60 million over the 2001–2005 period. Because enactment of S. 1658 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. S. 1658 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no significant impact on the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1658 is shown in the following table. The costs of this legislation fall within budget functions 750 (administration of justice) and 450 (community and regional development).

	By Fiscal Year, in Millions of Dollars				
	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Construction of Reconciliation Place:					
Authorization level	18	0	0	0	0
Estimated outlays	8	10	0	0	0
Sioux Nation Supreme Court and National Native American Mediation Training Center:					
Estimated authorization level	1	1	(¹)	(¹)	(¹)
Estimated outlays	1	1	(¹)	(¹)	(¹)
Native American Economic Development Council:					
Authorization level	0	10	10	10	10

	By Fiscal Year, in Millions of Dollars				
	2001	2002	2003	2004	2005
Estimated outlays	0	10	10	10	10
Total Spending Under S. 1658:					
Estimated authorization level	19	11	10	10	10
Estimated outlays	9	21	10	10	10

¹ Less than \$500,000.

Basis of estimate: S. 1658 would direct the Secretary of the Interior to take land into trust that is currently the property of the Wakpa Sica Historical Society, a private nonprofit corporation. The bill would authorize the appropriation of \$18 million to the Department of Housing and Urban Development for a grant to the Wakpa Sica Historical Society to construct Reconciliation Place on the land taken into trust. Reconciliation Place would serve as a visitor center, museum, educational center, and theater. It also would house the Sioux Nation Tribal Supreme Court, the National Native American Mediation Training Center, and the Native American Economic Development Council. Based on information from the Administration, CBO estimates that this provision would cost \$18 million over the 2001–2002 period.

S. 1658 would authorize the appropriation of such sums as necessary for the Department of Justice (DOJ) to provide technical and financial assistance to the Sioux Nation Tribal Supreme Court and National Native American Mediation Training Center. Based on information from DOJ, CBO estimates that this provision would cost \$1 million in each of fiscal years 2001 and 2002 to establish a law library, develop training and support materials, and train staff. After 2002, CBO estimates the cost of paying staff and maintaining the law library and support materials would be less than \$500,000 each year.

Finally, the bill would establish the Native American Economic Development Council to provide technical and financial assistance to Indians and Indian tribes in obtaining federal financial assistance to establish new businesses. S. 1658 would authorize the appropriation of \$10 million for each of fiscal years 2002 through 2006 for grants to the Native American Economic Development Council. CBO estimates that this provision would cost \$40 million over the 2002–2005 period, subject to the appropriation of the authorized amounts.

Pay-as-you-go considerations: None

Intergovernmental and private-sector impact: S. 1658 contains no intergovernmental or private-sector mandates as defined in UMRA and would have no significant impact on the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Lanette J. Keith and Ali Aslam. Impact on State, Local, and Tribal Governments; Susan Sieg Thompkins. Impact on the Private Sector: Sarah Sitarek.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The views of the Administration on S. 1658 are set forth in the following statement of Mark C. Van Norman, Director, Office of

Tribal Justice, United States Department of Justice, on May 17, 2000, to the Committee on Indian Affairs:

STATEMENT OF MARK C. VAN NORMAN, DIRECTOR, OFFICE
OF TRIBAL JUSTICE

Good Afternoon, Mr. Chairman and Members of the Committee. My name is Mark C. Van Norman and I am the Director of the Office of Tribal Justice, Department of Justice. Thank you for inviting us to testify on S. 1658, a Bill to authorize the construction of a Reconciliation Place in Forte Pierre, South Dakota, and for other purposes.

At the outset, I should emphasize the importance of the government-to-government relations. Congress has a long-standing policy of promoting Indian Self-Determination and in recognition of Indian sovereignty, promotes government-to-government relations with Indian tribes. The Executive Branch also respects the sovereignty of Indian tribes and works with the tribes on a government-to-government basis. In 1998, the President Executive Order 13084, on Consultation and Coordination with Indian Tribal Governments, which explains fundamental principles of Federal-tribes relations:

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

63 Fed. Reg. 27655 (1998).

In our Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes, we have pledged to work with Indian tribes on a government-to-government basis, guided by respect for tribal sovereignty, and to assist Indian tribes as they work to develop strong law enforcement, tribal courts, and traditional justice systems. 61 Fed. Reg. 29424 (1996). The Office of Tribal Justice was established in 1995 to provide a permanent channel of communication for tribal governments to express their concerns to the Department of Justice; to coordinate departmental policy on Indian affairs both within the Department and with other federal agencies; and to ensure that the Department works with the tribes on a basis of government-to-government relations.

S. 1658 would authorize the construction of a Reconciliation Place in Pierre, South Dakota, promote the formation of the Sioux Nation Supreme Court to serve as an appellate court for the tribes of the Sioux Nation, and establish an economic development council.

The Administration believes that steps have been taken to render the construction of a Reconciliation Place and the establishment of an economic development council unnecessary. The Administration has requested in the FY 2001 budget funds for the planning and design of the Lakota Sioux Heritage Cultural Center at Badlands National Park. Planning for the Center's construction is well underway and road construction is ongoing in this Fiscal Year. The Center will promote the public's understanding of the history of the Sioux Nation and act as a repository for cultural and historical items.

Similarly, the Administration has established Native American EDGE. Native EDGE is HUD's Native American Economic Development Access Center which will, for the first time, link over twelve Federal agencies through a single toll-free number and web-site so that lending institutions, non-profits, foundations, Native American business owners, and private businesses can collaborate to achieve sustainable economic development in Indian country. The Access Center will provide personalized research, initiate dialogue among entrepreneurs, coordinate with other Federal agencies, and share knowledge and experience to ensure the expansion of economic development in Indian country.

Pursuant to our mission, the Office of Tribal Justice consulted with tribal representatives who have told us that they view efforts to promote the unity of the Sioux Nation as an important objective and support the concept of the Sioux Nation Supreme Court. The Department of Justice joins the Sioux tribes and the State of South Dakota in supporting a strong tribal court system as envisioned by section 102 of S. 1658.

Before turning to a discussion of the history and circumstances of the Sioux Nation, I would like to touch briefly on some of our general work in the areas of tribal law enforcement, tribal justice and reconciliation between the United States and Native Americans.

The Department of Justice has been working on both civil rights concerns and tribal justice concerns among Native Americans generally, and the tribes of the Sioux Nation in particular. The Department of Justice, for example, participated in the hearing that the South Dakota Advisory Committee to the U.S. Civil Rights Commission held in Rapid City, South Dakota in December, 1999 to address the concerns of Native Americans. In keeping with the S. 1658 policy that promotes the formation of a Sioux Nation Supreme Court, the State Advisory Committee made a number of recommendations to assist tribal courts in administering justice. Among other things, the Committee recommended,

The Department of Justice and Interior should expand their efforts to provide funding, training, and technical assistance to tribal courts and tribal law enforcement. Tribal governments should make every effort to insulate their professional law enforcement entities and courts from the pressures of political influence and patronage.

Three years before this recommendation, the Department of Justice—together with the Department of the Interior—undertook the Indian Country Law Enforcement Improvement Initiative. The State Advisory Committee's recommendation reinforces the importance of our FY 2001 budget request. The Department of Justice requested \$173 million to improve tribal law enforcement and justice systems, including \$45 million for tribal police, \$34 million for tribal detention, \$20 million for tribal juvenile justice, and a \$15 million request to enhance tribal courts, among other things. This request is essential because effective tribal law enforcement is a necessary adjunct to effective Federal law enforcement in areas of Indian country, like South Dakota, that rely on the Justice Department to prosecute general felony crimes by or against Indians. Furthermore, tribal courts are necessary partners with the tribal police maintaining public safety on Indian reservations.

The Department of Justice promotes the formation of intertribal courts, consistent with tribal self-determination. The Sioux tribes have a vital need for assistance in the area of tribal law enforcement and tribal courts, and the Department of Justice, in cooperation with the Bureau of Indian Affairs, has been working actively with the tribes of the Sioux Nation under the Indian Law Enforcement Improvement Initiative.

The Civil Rights Division also actively protects the civil rights of American Indians and Alaska Natives through its enforcement of various civil rights statutes, including the criminal statutes that allow for federal prosecution of hate crimes and police misconduct, the Voting Rights Act, the Fair Housing Act, and the Equal Opportunity Credit Act. For example, the Civil Rights Division has brought lending discrimination cases against banks which charge Indians higher interest rates than other customers. In May 1997, the United States and a Nebraska bank that serves the Oglala Sioux community entered a consent decree, which provides that the bank will pay \$175,000 for victim compensation, pay \$100,000 towards application fees on new loans to Indians, actively recruit Indian employees, and provide an education program for Indian borrowers. Positive working relationships with tribal governments play an important part in the success of the Division's work to protect the civil rights of Native Americans.

THE HISTORY OF THE SIOUX NATION & THE NEED FOR
RECONCILIATION

Historically, the United States adopted a policy to protect Indian tribes, Indian lands, and Indian rights. In the Northwest Ordinance of 1787, the Continental Congress declared:

The utmost good faith shall always be observed to the Indians, their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorised by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them. * * *

Consistent with this policy, President Jefferson commissioned the Lewis and Clark Expedition in 1803 to explore the Louisiana Purchase.

As the expedition made its way up the Missouri River through South Dakota, Lewis and Clark stopped and visited the Yankton Sioux Tribe. Among the Yankton Sioux, a young baby was wrapped in an American flag by the expedition members. That baby later grew up to be the famous Yankton Chief, Struck by the Ree, and he led his people on a course of friendship with the United States. See *Struck by the Ree*, Yankton Daily Press & Dakotan (Sept. 12, 1994); http://www.yankton.net/stories/091599/bus_struck.html. In 1858, Chief Struck by the Ree signed the Treaty of 1858 with the United States on behalf of his tribe, preserving the peace and securing the Yankton Sioux homeland. See Treaty with the Yankton Sioux, 1858; 11 Stat. 748. This event is just one example of the profound effect that the Lewis and Clark expedition had on the Sioux Nation. The Lewis and Clark expedition met the Sioux people at other places along the Missouri River, notably near the present day site of Fort Pierre along the Bad River. Yankton Area Chamber of Commerce, *Lewis & Clark Historic Trail: the South Dakota Trail* <http://www.lewisclark.net/sdtrail/index.html>. Thus, the Bad River, or Wakpa Sica in the Lakota language, is a very appropriate site for a Reconciliation Center.

In 1815, the United States entered into treaties with the Dakota and Lakota tribes of the Sioux Nation, which pledged federal protection for the tribes. See e.g., Treaty with the Teton (Lakota), 1815, 7 Stat. 125. In 1825, the United States entered into treaties of peace, friendship and commerce with the tribes of the Sioux Nation to promote the fur trade and the safe passage of American citizens through Sioux Nation territory. See e.g., Treaty with the Hunkpapa Band of the Sioux Tribe, 1825, 7 Stat. 257. In 1851, to facilitate trade and reduce intertribal conflict that sometimes threatened safe passage, the United States entered into treaty with the Sioux and neighboring Indian

tribes, which described their respective aboriginal areas. Treaty with the Sioux, 1851, 11 Stat. 749.

After the Civil War, the United States' expansion westward brought conflict with the Sioux Nation, who saw their buffalo herds begin to decline with the passage of settlers along the Oregon Trail. In 1866, the United States sought to build a road through Sioux Nation hunting grounds in the Powder River valley, and the Sioux tribes objected. For the next two years, the Sioux tribes fought the Powder River or Red Cloud's War to protect their hunting grounds and ultimately, the United States determined that the best course would be to enter into a treaty that established a permanent reservation for the Sioux Nation and delineated their hunting grounds. In the Treaty with the Sioux Nation, 1868, the United States set aside South Dakota west of the Missouri River as the Great Sioux Reservation as a "permanent home" for the Sioux Nation and delineated tribal hunting lands in the Powder River valley. Treaty with the Sioux, 1868; 15 Stat. 635.

Yet, in 1874, gold was discovered in the Black Hills of South Dakota, and a gold rush began. After attempting to maintain existing reservation boundaries, the Grant Administration sought to purchase the Black Hills, but the Sioux Nation declined. In 1876, the United States ordered the Sioux to report to Indian agencies along the Missouri River and in Nebraska, away from the Black Hills. When Sitting Bull, Crazy Horse, and several bands of Sioux refused to comply, the United States sent out the army to force the issue. This led to the Battles of the Rosebud and the Little Big Horn. After Custer's defeat at the Little Big Horn, the United States sent out more troops to force the Sioux to report to the Indian agencies, resulting in the Battle of Slim Butte and many other battles where a number of Sioux were killed. *United States v. Sioux Nation*, 448 U.S. 371, 379–80 (1980). In 1877, Congress passed an Act taking the Black Hills from the Sioux Nation. Act of Feb. 28, 1877, 19 Stat. 254.

In the 1880s, the United States sought more land from the Sioux. In the 1889 Agreement with the Sioux, the United States divided the Great Sioux Reservation into the Cheyenne River, Crow Creek, Lower Brule, Pine Ridge, Rosebud, and Standing Rock Sioux Reservations. The United States acquired several million acres of surplus lands. Shortly after this Act, the Ghost Dance religion became popular on several of the reservations. Some non-Indians were alarmed because the Ghost Dance was practiced in substantial encampments, the U.S. Army was called in, and in December, 1890, more than 300 Sioux Indians, mostly unarmed elderly, women and children, were massacred at Wounded Knee. *Sioux Tribe of Indians v. United States*, 7 Cl. Ct. 468, 476 (Cl. Ct. 1985). The United States has expressed its sincere regret for the Wounded Knee Massacre.

Many of the Native American people of South Dakota continue to feel the loss brought about by these events.

Against this background, it is appropriate for Congress to establish a Reconciliation Place to reflect the history of the Lewis and Clark Expedition and to promote knowledge of and understanding of the history and culture of the Sioux Nation. This effort would help foster a healing spirit of reconciliation among the Sioux Nation and other citizens of South Dakota and would promote a better understanding of Native American history and culture among the Nation as a whole.

Furthermore, the Committee might consider reconciliation among Native Americans in a larger sense. There is a need for Native American mediators trained in conflict resolution techniques throughout Indian country to address conflicts that sometimes arise between Indian tribes and neighboring communities and within tribal communities themselves. Presently, the Department of Justice Community Relations Service (CRS) provides mediation services to tribal governments throughout the Nation. There are many situations where CRS cannot respond due to jurisdictional restrictions or resource allocation issues. The Committee might consider whether these needs might be addressed by the establishment of a mediation training center at the proposed Wakpa Sica Reconciliation Place. Such a mediation center would enable tribal leaders and officials to acquire mediation skills useful in mediating conflicts that arise in Indian communities and surrounding communities. CRS could assist by providing technical assistance to such a mediation training center.

THE SIOUX NATION SUPREME COURT

As I noted earlier, the Department supports the development of intertribal courts. There are a number of such efforts in place among tribes in the United States, including intertribal courts of appeals like the Northwest Inter-tribal Court of Appeals. These intertribal courts can produce a number of benefits. They promote inter-tribal unity. The resource sharing they represent can produce efficiencies. In instances where multiple tribes share a common political, historical, and cultural experience, they can represent a step towards that tradition of political unity. They can provide a means for marshaling legal expertise—including expertise in tribal customary legal structures—to provide high quality adjudication of disputes.

The Department of Justice supports the efforts of the constituent tribes of the Great Sioux Nation to form the Sioux Nation Tribal Court. These tribes share a history and tradition of unified political structure and action. Many of their respective constitutions and by-laws retain a recognition of that historical structure by authorizing their tribal councils to select delegates to serve on a Sioux Nation Council. Moreover, as federally-recognized Indian tribes, each constituent tribe of the Great Sioux Nation “possess[es] the inherent authority to establish [its] own form of government, including tribal justice systems.” 25 U.S.C. § 3601(4). This authority has been termed “the first

element of sovereignty.” Felix M. Cohen’s Handbook of Federal Indian Law (1982 ed.) at 247. Their respective decisions to participate in the Sioux Nation Tribal Court is an exercise of that authority. The Department supports that exercise, consistent with the Department’s Policy on Indian Tribal Sovereignty and Government-to-Government Relations with Indian Tribes, which declares the Department’s commitment “to strengthening and assisting tribal governments in their development and to promoting Indian self-governance.”

Section 102(a) of S. 1658 would direct the Department of Justice to provide technical and financial assistance to the Sioux Nation towards the development and operation of the Sioux Nation Tribal Supreme Court and this provision falls within the Department’s commitment to assist Indian tribes as they develop strong tribal courts. The language of section 102(a) requires technical amendment, however. The current language of section 102(a) directs the Department to “provide such technical and financial assistance to the Sioux Nation as is necessary.” This language should be amended to provide that: “To promote the development and operation of the Sioux Nation Tribal Supreme Court, the Attorney General may provide appropriate technical and financial assistance to the Sioux Nation from available funds.”

CONCLUSION

In conclusion, the Administration supports the vision of strong tribal courts as embodied in S. 1658. Again, thank you for the opportunity to testify before the Committee today.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompany a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill S. 1658, as amended. The Committee finds that the regulatory impact of S. 1658, as amended, will be negligible.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of the rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are required to be set forth in the accompanying Committee report. The Committee states that enactment of S. 1658 will not result in any change in existing law.